

**Board Meeting Minutes
March 7 & 8, 2002**

**Board for Professional Engineers and Land Surveyors
Radisson Fisherman's Wharf
250 Beach Street
San Francisco, California 91406
(415) 392-6700**

Thursday March 7, 2002

Board Members Present: Vince DiTomaso (President), Millicent Safran (Vice-President) Gregg Brandow, David Chen, James Foley, Andrew Hopwood, and Stephen Lazarian.

Board Members Absent: Kathryn Hoffman

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Joanne Arnold (Legislative Program Manager), Cindy Morris-Hoppe (Executive Analyst), and Debbie Thompson (Budget Analyst)

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order at 9:25 a.m. Roll call was taken, but there was no quorum at that time.

President DiTomaso announced that items would be taken out of order due to quorum issues and the need to take action on certain items.

Mr. Lazarian arrived at 9:35 a.m. A quorum was then established.

2. Public Comment

Mr. Greenlaw stated he had three agenda items he wanted to comment on, but he would wait until they came up during the enforcement item. Mr. Greenlaw provided the Board with written comments regarding the Code of Professional Conduct and the definitions of negligence and incompetence.

9. Approval of RFP #7080-01-1

Ms. Christenson reported that there were three proposals received. On February 15, 2002, it was awarded to PMES. However, on February 19, 2002, a protest letter was received from CPS. The letter has been sent to the legal office at the Department of General Services. This will effect the start date for the examination development process.

3. Closed Session

The Board went into closed session at 9:40 a.m.

4. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board discussed pending litigation as noticed.

Ms. Christenson also reported that the Board approved for licensure effective January 25, 2002, the amended results of the take-home examination for the candidates who had previously passed the 8-hour portion of the examination and the Seismic Principles and Engineering Surveying examinations (as appropriate).

The Board adopted the cut score of 676 out of 1397 for the Structural October 2001 examination.

Ms. Christenson reported that the Board adopted the default decision regarding Mr. William Davis Reed and the Stipulations regarding Mr. Richard Godina, Mr. Donald McMath, Mr. Mark Reader, Mr. Alfred F. Colarusso, Jr., and Mr. Roy Adrian Anderson. The Board granted the Petition for Reconsideration of Mr. Ronald Warrecker.

5.a. Approval of the Minutes of the January 24 & 25, 2002 Board Meeting.

MOTION: Mr. Hopwood/Mr. Foley moved to approve the minutes of the January 24 & 25, 2002 Board Meeting.

VOTE: 7-0, motion carried.

5.b. Approval of Candidates for Certification/Licensure. (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Ms. Safran/Mr. Hopwood moved to approve the candidates for licensure based on examination results approved in closed session.

VOTE: 7-0, motion carried.

6. Approval of Delinquent Reinstatements.

MOTION: Mr. Hopwood/Mr. Lazarian moved to approve the Delinquent Reinstatements as follows:

Chemical

1. **David A. Balgobin**
Reinstate applicant's chemical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Civil

1. **James Atwood, Jr.**
Reinstate applicant's civil license once he takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.
2. **John Clements**
Reinstate applicant's civil license once he takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.
3. **Shu Hsieh**
Reinstate applicant's civil license once he takes and passes the Board's Laws and Rules Examination.
4. **Jeffrey Place**
Reinstate applicant's civil license once he takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.
5. **James Sheetz**
Reinstate applicant's civil license once he takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.
6. **Alan Simpson**
Reinstate applicant's civil license once he pays all required delinquent renewal fees.
7. **Mark Williams**

Reinstate applicant's civil license once he takes and passes the Seismic Principles Examination, the Engineering Surveying Examination, and the Board's Laws and Rules Examination.

Mechanical

1. James C. Saeger

Reinstate applicant's mechanical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

VOTE: 7-0, motion carried.

7. Comity and Temporary Authorization Applications.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the comity applicants listed on pages 33 & 34 of the agenda for licensure.

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the following Civil applicant to set for the Seismic Principles and Engineering Surveying examinations, and waive the second division examination (NCEES Civil Engineering examination) because the applicant has the appropriate experience, has taken and passed 8-hour NCEES engineering examination, and is registered in another state. In order to obtain registration, the applicant must still take and pass the Seismic Principles, Engineering Surveying, and take-home examinations.

1. Peter Chander

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the following Electrical applicant for licensure by waiving the second division examination (NCEES Electrical Engineering examination) because the applicant has the appropriate experience, has taken and passed an 8-hour NCEES EIT examination, an 8-hour NCEES PE examination, is licensed in another state, and has taken and passed the take-home examination.

1. Michael F. Flemming

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the following Electrical applicant for licensure by waiving the second division examination (NCEES Electrical Engineering examination) because the applicant has the appropriate experience, has taken and passed an 8-hour EIT examination, an 8-hour PE examination, is licensed in other states, and has taken and passed the take-home examination.

1. Sudhir N. Jategaonkar

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Dr. Chen moved to approve the following Mechanical applicant for licensure by waiving the second division examination (NCEES Mechanical Engineering examination) because the applicant has the appropriate experience, has taken and passed both an 8-hour NCEES EIT examination, and an 8-hour NCEES PE examination, is licensed in another state, and has taken and passed the take-home examination.

1. Stephen R. Peterson

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Mr. Lazarian moved to approve a request of a 180 day Temporary Authorization extension for Mr. William Carter Stampados.

VOTE: 7-0, motion carried.

11. Examination/Qualifications

a. Temporary Authorization (Possible Action)

Ms. Christenson reported that staff reviewed the NCEES Model Law and Rules and contacted other states regarding their laws.

The NCEES Model Law and Rules provides for the granting of a temporary permit for a definite period of time not to exceed one year to do a specific job.

Washington indicated that they have an expedited comity process and rarely receive requests for temporary certification.

Dr. Brandow stated that California is the only state that does not allow comity for Civil Engineers within a short period of time.

The Board had lengthy discussion regarding concerns about Temporary Authorizations.

President DiTomaso directed staff to have a proposal for the next Board meeting.

b. Delinquent Licensees (Possible Action)

MOTION: Mr. Hopwood/Dr. Chen moved to direct staff to pursue legislation to change the delinquency fee from 50% to 100%. The Board also authorized Ms. Christenson to wait to pursue this proposal until next year if necessary.

VOTE: 7-0, motion carried

13. Legislative

a. Discussion of Legislation for 2002, including but not limited to, AB269 (Support), SB1244 (Support) (Possible Action)

Ms. Arnold reported on this item.

MOTION: Ms. Safran/Mr. Hopwood moved to watch SB1958, Environmental Quality Assessment.

VOTE: 7-0, motion carried.

MOTION: Ms. Safran/Mr. Hopwood moved to support SB2018, Boards-Funds Subject to Appropriation.

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Mr. Lazarian moved to support SB2024, State Employees-Vacant Positions.

VOTE: 7-0, motion carried.

MOTION: Mr. Hopwood/Mr. Lazarian moved to support SB2025, Sunset.

VOTE: 7-0, motion carried.

MOTION: Ms. Safran/Mr. Hopwood moved to watch SB2059, Boards of DCA.

VOTE: 7-0, motion carried.

b. Status of Regulations

Ms. Christenson reported on this item.

Ms. Christenson also reported that there will be a hearing on Regulation 407 Fee Restructure, at the April 2002 Board meeting.

Ms. Christenson reported that the following Regulations will be discussed/reviewed in 2002:

- Five Year Credit for ABET Masters Degree
- ABET Approval of Foreign Degrees
- LSIT experience requirements

17. Liaison Reports (Possible Action)

b. NCEES

MOTION: Mr. Lazarian/Mr. Hopwood moved to request that Mr. Andrew Liston be nominated for a Distinguished Service Award.

VOTE: 7-0, motion carried.

2. NCEES Policy on Mechanical Pencils.

Ms. Christenson reported that NCEES will provide 1 ½ pencils per candidate for the examination.

MOTION: Ms. Safran/Mr. Lazarian moved to authorize the Executive Officer to purchase enough mechanical pencils to give 2 pencils per candidate.

VOTE: 7-0, motion carried.

14. Enforcement

a. Enforcement Program Update

1. Enforcement Outreach Program

Ms. Eissler reported that Jacqueline Jenkins, Enforcement Outreach Coordinator, has a meeting scheduled with the Mother Lode Chapter of CELSOC on March 20, 2002.

2. Board Rule 411 (Seal & Signature) Rulemaking Status

Ms. Eissler reported that the amendments to Board Rule 411 were approved and became effective on January 31, 2002.

b. Approval to Begin the Rulemaking Process to Adopt Board Rules 475 and 476 (Codes of Professional Conduct for Professional Engineers and Professional Land Surveyors) (Possible Action)

Ms. Eissler reviewed the information contained in the agenda.

MOTION: Ms. Safran/Mr. Foley moved to direct staff to proceed with the rulemaking process to adopt Board Rules 475 and 476, as shown on Pages 108-113 of the agenda.

After much discussion, including input from the public, the following amended motion was made:

AMENDED MOTION: Ms. Safran/Mr. Foley moved to direct staff to proceed with the rulemaking process to adopt Board Rules 475 and 476, as shown on Pages 108-113, with the following modifications:

In subdivision (b)(4), delete the word “fully” and rephrase it to read “disclosed to and approved by that agency.”

In subdivision (e), add the following: “(6) “Disclosures made regarding illegal conduct.”

Divide subdivision (c)(1) into subdivisions (c)(1) and (c)(2), as follows:

(c)(1) A licensee shall not misrepresent his or her qualifications to a prospective or existing client or employer.

(c)(2) A licensee shall not misrepresent to a prospective or existing client the licensee’s scope of responsibility in connection with projects or services for which the licensee is receiving or will receive compensation from that client.

VOTE: 7-0, motion carried.

The Board, with input from its attorneys and staff, as well as the public, also discussed the issues described below; however, the Board decided to notice the language as stated in the amended motion and then decide if any other issues need to be addressed based on the public comments received during the noticed public comment period.

A) The purpose of the Code of Professional Conduct is to address ethical issues of professional conduct and not to address technical, practice-related issues, such as negligence and incompetence in the professional practice.

B) Ms. Eissler and Mr. Duke explained that the Board does not have the legal authority to include a statement in the Code of Professional Conduct that it does not apply to the concept of civil or financial liability, as has been suggested by CELSOC, based on the language in the current regulations regarding responsible charge. Ms. Eissler explained that such a provision could be included in the responsible charge regulations because it is specifically stated in the statutes regarding responsible charge. However, since it is not specifically stated in the statutes regarding the Code of Professional Conduct, the Board does not have the statutory authority to include such language in the Code of Professional Conduct regulations.

C) It might be very difficult, if not impossible, for the licensee to accurately and timely determine who the “project owners” are in order to provide them with the notice of a possible conflict of interest, as required in subdivision (c)(1). However, from both the licensee’s and the consumer’s standpoint, the project owners should be notified even if they are not the licensee’s clients.

D) Subdivision (d)(1) uses the phrase “copyrighted work of other licensees or design professionals” to make it clear that copyrighted work of others relates to the professional practice work of the professional engineer or professional land surveyor who is subject to the Codes of Professional Conduct.

c. Approval to Begin the Rulemaking Process to Amend Board Rule 404 to Add Definitions of Negligence and Incompetence (Possible Action)

Ms. Eissler reviewed the information contained in the agenda. She reminded the Board that the Sunset Review Committee had strongly recommended that the Board define negligence and incompetence in either statute or regulation. She further reminded the Board that the Board had already discussed and tentatively approved the definitions at its July 2000 meeting but had decided to wait until the Code of Professional Conduct had been discussed in more detail before proceeding with rulemaking to adopt the definitions.

MOTION: Ms. Safran/Mr. Hopwood moved to direct staff to proceed with the rulemaking process to amend Board Rule 404, as

shown on Pages 117-120 of the agenda, to add the definitions of “negligence” and “incompetence” and to correct the definitions of “electrical engineering” and “mechanical engineering.”

After much discussion, including input from the public, Ms. Safran and Mr. Hopwood withdrew their motion.

The Board requested that Ms. Ruff prepare a formal memorandum regarding negligence and incompetence as used in administrative disciplinary proceedings for the April Board meeting.

d. Approval to Begin the Rulemaking Process to Amend Board Rules 404.1 and 404.2 (Responsible Charge) (Possible Action)

Ms. Eissler reviewed the information contained in the agenda, including the draft language prepared by Mr. Duke.

Dr. Brandow and Mr. Lazarian questioned if the issue of one engineer using another engineer’s work illicitly could be addressed in this regulation. Mr. Duke and Ms. Eissler explained that that issue was addressed in the Codes of Professional Conduct, since it is an issue of professional conduct, and would not really be appropriate to be included in the definition of responsible charge.

Dr. Brandow said that many engineers think that they are not allowed to use another engineer’s work. Mr. Foley questioned why the definition needed to even be amended since Mr. Duke has already explained that the current engineer does allow for that and the Criteria for Responsible Charge, as currently stated in the regulation, indicates what an engineer needs to do to be in responsible charge.

MOTION: Ms. Safran/Dr. Chen moved to direct staff to proceed with the rulemaking process to amend Board Rules 404.1 and 404.2, as shown on Pages 122-125 of the agenda, to clarify the definition of and requirements for responsible charge for professional engineers and land surveyors.

After further discussion, including input from the public, Ms. Safran and Dr. Chen withdrew their motion.

The Board directed staff to further review this issue to determine if the regulation needs to be amended at all. If it does, the language in proposed subdivision (e) needs to be clarified to refer to only to the licensees in responsible charge.

21. Other Items Not Requiring Board Action

Ms. Lynn Morris, DCA Deputy Director for Board Relations, advised the Board that she was attending the meeting to express the appreciation of DCA and the Administration for all of the hard work and effort put in by the Board.

She advised that DCA is very aware of the quorum issue facing the Board, and she is doing everything she can to help solve the problem.

Ms. Morris asked the Board what their reaction was to SB 1958, the Geology's Board legislative proposal regarding the REA II program. President DiTomaso advised that the Board had taken a "watch" position at this time. Ms. Morris also asked if the Board has encountered any problems with REAs practicing civil engineering. Ms. Eissler explained that the language in the current REA law clarifies what REAs can and cannot do and what civil engineers can do; therefore, the Board does not have problems and has not received complaints against REAs for practicing civil engineering.

Friday, March 8, 2002

Board Members Present: Vince DiTomaso (President), Millicent Safran (Vice-President) Gregg Brandow, James Foley, Andrew Hopwood, and Stephen Lazarian.

Board Members Absent: David Chen and Kathryn Hoffman

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Nancy Eissler (Attorney General Liaison Analyst), Cindy Morris-Hoppe (Executive Analyst), and Debbie Thompson (Budget Analyst)

1. Roll Call to Establish a Quorum

The meeting was called to order at 9:05 a.m. Roll call was taken; there was no quorum.

2. Public Comment

No public comment.

10. Title Act Study (Update)

Ms. Christenson reported that the Title Act Study is running a little behind schedule. She met with DCA to get things back on track.

They are in the process of reviewing educational data. They have also contacted other states to get information, but are having a difficult time getting information needed.

Ms. Christenson reported that, on March 22, 2002, there will be a public hearing at the Contractors State Licensing Board to get input from interested parties. A notice will be sent out with a list of questions that they would like addressed. The notice and agenda will be posted on DCA's and the Board's websites prior to the meeting.

12. Administrative

a. Fund Condition (Possible Action)

Ms. Thompson reported on the changes to the fund condition dated February 6, 2002. An upward adjustment was made for FY 2001/02 for application revenue due to the increase in the number of applications received so far this FY. Other changes include a reimbursement revenue increase and a reduction in expenditures for employer paid 401(k) contributions. For FY 2002/03, the projected revenue was adjusted for the prior five-year average total revenue received and expenditures were increased for the Board's NCEES Land Surveyor National Exam Conversion BCP. These changes have no effect on the projected FY 2003/04 deficit. Ms. Thompson will include in future fund conditions, the projected additional revenue expected from the proposed fee increase regulations.

b. FY 2001/02 & 2002/03 Budget (Possible Action)

Ms. Thompson reported that the budget expenditure for this FY was adjusted upward for an anticipated population increase at the April 2003 exam and for an increase in the Board's building lease expense. These increases have reduced the Board's projected year-end savings. The FY 2002/03 budget will show a net increase of \$1,210 after all reductions and cost increases are included. The Land Surveyor BCP funding for Conversion to the National exam is included in the FY 2002/03 budget. Mr. DiTomaso questioned what effect the Board's current staff vacancies would have on the FY 2002/03 budget. Ms. Thompson indicated that if the vacancies were not filled by FY 2002/03, the funding authority to hire for these positions would be taken out of the budget.

c. Exam Cost Breakdown (Possible Action)

Ms. Thompson reported that the FY 2000/01 exam costs were broken down into three groups (PE NCEES Exams, California-Specific Exams and NCEES EIT/LSIT Exams). This was done as a result of public concern expressed at the January 2002 Board meeting that NCEES exam costs should be separately addressed because their costs are less than the state-specific exams. Each category identifies the average cost per exam based on the number of exams given. The exam cost per PE NCEES exam is \$235, per California Specific exam is \$397 and per NCEES EIT/LSIT exam is \$157. Ms. Christenson pointed out that these costs will increase in future FYs due to the requirement that the Board use the NCEES Land Surveyor and Structural exams.

d. FY 2003/04 Budget Change Proposals (Possible Action)

Ms. Thompson reported that the Board will submit a FY 2003/04 BCP for the NCEES exam mechanical pencil requirement and for the exam population increase.

Ms. Thompson reported that there has been an increase in projected application revenue and a decrease in projected renewal revenue.

16. Technical Advisory Committee Reports (Possible Action)

- a. Land Surveying**
 - 1. No meeting.
- b. Civil/Geotechnical Engineering**
 - 1. No meeting.
- c. Mechanical Engineering**
 - 1. No meeting.
- d. Electrical Engineering**
 - 1. No meeting.
- e. Structural Engineering**
 - 1. No meeting.

President DiTomaso reported that all Technical Advisory Committees will be meeting on Thursday, April 25, 2002, in San Diego, California, before the Board meeting.

Mr. Lazarian requested information be presented at the April meeting on how TAC members can be utilized for issues that may arise if the Board loses its quorum in June.

17. Liaison Reports (Possible Action)

- a. ABET**
 - No report given.
- b. NCEES**
 - 1. **President/MBA meeting**

President DiTomaso reported on the meeting he attended in San Antonio, Texas, February 15 & 16, 2002.

President DiTomaso expressed his concerns regarding "Generic" Licensing. In his opinion, for California to convert to generic licensing in a manner that would protect the public, would be a monumental task.

c. Technical and Professional Societies

No report given.

15. Presentation by NCEES, Friday, March 8, 2002

a. NCEES Update-Ted Fairfield, P.E., NCEES President

Mr. Fairfield addressed the Board regarding current issues being addressed by NCEES.

He explained that most states have de facto Title Acts, although few admit it, simply because they do not do much enforcement against unlicensed practice unless the person uses a restricted title.

Mr. Fairfield advised that he has continued the Engineering Licensure Qualification Task Force (ELQTF) to review the concept of licensure, whether it should be changed, and how it should be changed. There will be status report meetings and workshops at the 2002 Annual Meeting; however, no recommendations will be made until the 2003 or 2004 Annual Meeting.

He explained that it is possible that examination costs may need to be increased because the Group II examinations are losing money; they have added many more disciplines, but all of the Group II disciplines have a very low number of examinees each year. He has created an Exam Splintering Hit Team to review and possibly recommend a more stringent criteria before a new examination is created, including clear evidence that the new discipline really is a separate discipline and not just a sub-specialty of an existing discipline.

Mr. Fairfield advised that examination security is becoming a major issue because of the cost impact of having to declare some of the questions or the entire examination as compromised. He estimated that the cost impact of examination security problems from the October 2001 examination will be around \$400,000. He has created an Examination Security Task Force to look at such issues as how to determine the level of compromise; for example, if one book is lost in one state, is the entire examination compromised.

Mr. Fairfield explained that comity and mobility are becoming bigger issues. It used to be just an individual issue, but now many states are

facing the issue of corporate comity. Many states require that the majority of the people in ownership of the company must be licensed in that state before a certificate of authorization will be issued to the company. He said that he believes California does it the right way by not licensing the companies but only requiring them to only file an Organization Record form. He has created a committee, and appointed Dr. Brandow to chair it, to review issues being raised by structural engineers in many states, such as generic states that do not allow the use of specific branch titles and whether there should be a Model Law Structural Engineer Certificate/Specialization. Mr. Fairfield said that the Model Law has been amended so that experience does not have to be gained before the licensee takes and passes the PE examination; this will help California licensees with comity in other states.

Mr. Fairfield advised that USCIEP now deals primarily with European and Asian-Pacific engineering groups; it is being made clear that any type of reciprocal licensure must include passing the PE examination in order to practice in the U.S. NCEES is also working with Canada and considering whether or not the FE examination could be waived for Canadian licensees (but not the PE examination).

Mr. Fairfield recommended that the Board should act locally but think nationally, as he recommends all states do. States should consider what effect local actions will have nationally. However, he believes that there are very valid reasons for state-specific examinations or requirements.

b. NCEES Ambassador Program-Mike Shannon, P.E., (S.C.)

Mr. Shannon provided the Board with an overview of the presentation that NCEES gives to colleges and universities on how the FE examination can be used by engineering schools as an outcomes assessment tool.

18. President's Report

No report given.

19. Executive Officer's Report

1. Administration Report

a. Executive summary report

Ms. Christenson reported on the Executive Summary Report.

2. Personnel

a. Hiring Freeze

Ms. Christenson reported that our Land Surveyor Consultant will be out for several weeks. In the meantime, 2 TAC members and Mr. George Shambeck will be helping out with processing Land Surveyor applications.

3. Enforcement/Examination/Licensing
a. College Outreach

Ms. Christenson reported that Pam Simmons and a representative from CSPE went to San Luis Obispo to do a presentation.

4. Publications/Website
a. Website Activity

Ms. Christenson advised the Board that the website activity statistics were included in the agenda packet.

b. Bulletin

Ms. Christenson reported that we will be going outside to Sacramento State University to have the Bulletin published due to the lack of staff.

5. Other
a. DCA Update

Ms. Christenson reported that the legislative budget hearing for the Board's budget is scheduled for March 13, 2002, and the Board is on consent.

20. Approval of Board Travel (Possible Action)

There was no board travel to be approved.

21. Other Items Not Requiring Board Action

a. Next Board meeting: April 25 & 26, 2002, Courtyard Marriott, San Diego, California.

President DiTomaso encouraged all Board members to attend the meeting because of the quorum issue.

22. Adjourn

The Board adjourned at 12:15 p.m.

PUBLIC PRESENT

Tom Stout
Tom Ladegaard, USD-CPIL
Richard Markuson, CELSOC
Charles O. Greenlaw, S.E.
Steve Hao, Caltrans
George Shambeck, CLSA
R.H. Hamstra, PATCA
Lionel J. Sudds, PECG
John C. Westmoreland